

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANGELA UKPOMA,

Plaintiff,

v.

U.S. BANK NATIONAL
ASSOCIATION, et al.,

Defendants.

NO: 12-CV-0184-TOR

ORDER DENYING MOTION TO
VACATE

BEFORE THE COURT is Plaintiff's Motion to Vacate Summary Judgment (ECF No. 83). This matter is submitted for consideration without oral argument.¹ The Court has reviewed the briefing and the record and files herein, and is fully informed.

¹ Pursuant to L.R. 7.1(h)(3)(B)(iii), the Court finds that oral argument would not materially assist it in reaching a decision. The hearing currently scheduled for July 8, 2014, at 2:00 p.m. in Yakima is hereby **VACATED**.

1 Following the dismissal of her appeal by the Ninth Circuit for failure to
2 timely file her opening brief (ECF No. 82), Plaintiff moves this Court to vacate its
3 May 9, 2013 order granting Defendants' motion for summary judgment pursuant to
4 Federal Rule of Civil Procedure 60(b). In support of the motion, Plaintiff argues
5 that two intervening decisions by Division 1 of the Washington Court of Appeals
6 contradict this Court's rationale for granting Defendants summary judgment.
7 Plaintiff asserts that these two new cases rendered her appeal "premature," and
8 argues that it would be "unfair [to] the trial court and all parties if the first look at
9 the recent case law developments [was] in the Ninth Circuit." ECF No. 83 at 3.

10 As a threshold matter, there is no reason why Plaintiff could not have raised
11 her instant arguments before the Ninth Circuit. That Court routinely considers the
12 impact of a purported change in controlling law on a trial court's rulings. There is
13 nothing "premature" or "unfair" about moving forward with an appeal under these
14 circumstances, and Plaintiff's suggestion to the contrary appears to be a post-hoc
15 rationalization for her failure to timely prosecute her appeal.²

16 In any event, relief under Rule 60(b) is not warranted. A motion for relief
17 from judgment under Rule 60(b) must be filed "within a reasonable time." Fed. R.

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19 ² The Court has reviewed the Ninth Circuit's docket and notes that Plaintiff did not
20 move to stay her appeal pending the filing of a Rule 60(b) motion in this Court.

1 Civ. P. 60(c)(1).³ “What constitutes [a] ‘reasonable time’ depends upon the facts
2 of each case, taking into consideration the interest in finality, the reason for delay,
3 the practical ability of the litigant to learn earlier of the grounds relied upon, and
4 prejudice to other parties.” *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir.
5 1981). After the moving party’s opportunity to appeal has passed, the interest in
6 finality must be given “great weight.” *Id.*

7 The two Washington Court of Appeals cases on which Plaintiff relies,
8 *Walker v. Quality Loan Serv. Corp. of Wash.*, 176 Wash. App. 294 (2013) and
9 *Bavand v. OneWest Bank, F.S.B.*, 176 Wash. App. 475 (2013), were decided on

10 ³ Although plaintiff was within the Rule 60(c)(1)’s “no more than a year after the
11 entry of judgment” limitation for filing this motion, that is not dispositive of the
12 timeliness issue. It still must be filed within a reasonable time. *See Meadows v.*
13 *Dominican Republic*, 817 F.2d 517, 520-21 (9th Cir. 1987) (Such a motion may be
14 denied, although it was filed within the one year period, if the district court finds
15 that the [movant] was guilty of laches or unreasonable delay.) Here, unreasonable
16 delay is evident by the amount of time that has passed and the nature of this action;
17 an action to delay or upset a foreclosure.

1 August 5, 2013, and September 9, 2013, respectively.⁴ Plaintiff has made no effort
2 to explain why she waited nearly eight months to file the instant motion. Since
3 Plaintiff forfeited her opportunity to pursue an appeal, the interest in finality must
4 be afforded great weight. *Ashford*, 657 F.2d at 1055. Given that Plaintiff has not
5 offered a satisfactory countervailing interest, the Court finds that the instant motion
6 is untimely. Accordingly, the motion is denied.

7 **IT IS HEREBY ORDERED:**

- 8 1. Plaintiff's "Motion to Vacate Summary Judgment" (ECF No. 83) is
9 **DENIED.**

10 The District Court Executive is hereby directed to enter this Order and
11 provide copies to counsel. The file shall remain **CLOSED.**

12 **DATED** May 12, 2014.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

19 ⁴ Plaintiff also cites to *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079
20 (2013), an August 8, 2013, California decision which is not binding on this Court.